
United States Circuit Court of Appeals for the Ninth Circuit

HASSAM PAVING COMPANY AND OREGON HASSAM
PAVING COMPANY,

Appellees,

vs.

CONSOLIDATED CONTRACT COMPANY AND PACIFIC COAST
CASUALTY COMPANY,

Appellants.

Transcript of Record (Two Volumes) Vol. II

(pp. 346 to 387 and index to Vol. II)

UPON APPEAL FROM THE UNITED STATES
DISTRICT COURT OF OREGON

LOUIS W. SOUTHGATE,
CAREY & KERR,

Solicitors and Counsel for Appellees.

JESSE STEARNS,
JOHN H. HALL,

Solicitors and Counsel for Appellants.

Filed

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F. D. Monckton,
Clerk

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In the
District Court of the United States
FOR THE DISTRICT OF OREGON.

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Plaintiffs,

vs.

RELIANCE CONSTRUCTION COMPANY, a corporation; CITY OF HOOD RIVER, a municipal corporation, and NATIONAL SURETY COMPANY, a corporation,

Defendants.

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the testimony of A. C. Gilman to be adduced and used on behalf of defendants, may be taken under oath before Vivian Flexner, a Notary Public, as commissioner for that purpose who is not of counsel nor interested in said cause, at the office of John H. Hall and Jesse Stearns, in the city of Portland, Oregon, beginning on the 4th day of November, 1913, at 2 o'clock P. M., and thereafter from day to day as the taking of said deposition may be adjourned, and that said testimony may be taken

stenographically and put into typewriting and signed by the witness; and subject to all proper objections to the competency, relevancy and materiality thereof, and the testimony so taken may be read and used before the court in this cause as if the same had been taken in presence of the court.

CHAS. H. CAREY,
of Solicitors for Complainants.

JESSE STEARNS,
of Solicitors for Defendants.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE DISTRICT OF OREGON,

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Plaintiffs,

vs.

RELIANCE CONSTRUCTION COMPANY, a corporation; CITY OF HOOD RIVER, a municipal corporation, and NATIONAL SURETY COMPANY, a corporation,

Defendants.

Portland, Oregon, November 4, 1913.

Pursuant to stipulation for the taking of testimony at the office of John H. Hall and Jesse Stearns, Railway Exchange, at 2 o'clock P. M., present Jesse Stearns, counsel for defendants, at request of Judge Charles H. Carey the proceedings were adjourned to November 5, 1913, at 3 o'clock P. M.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE DISTRICT OF OREGON,

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Plaintiffs,

vs.

RELIANCE CONSTRUCTION COMPANY, a corporation; CITY OF HOOD RIVER, a municipal corporation, and NATIONAL SURETY COMPANY, a corporation,

Defendants.

Portland, Oregon, November 5, 1913.

Pursuant to stipulation for the taking of testimony at the office of John H. Hall and Jesse Stearns, Railway Exchange, at 3 o'clock P. M., present Charles H. Carey, counsel for plaintiffs, and Jesse Stearns, counsel for defendants, by agreement of parties the proceedings were adjourned to November 6, 1913, at 2 o'clock P. M.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE DISTRICT OF OREGON.

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Plaintiffs,

vs.

RELIANCE CONSTRUCTION COMPANY, a corporation; CITY OF HOOD RIVER, a municipal corporation, and NATIONAL SURETY COMPANY, a corporation,

Defendants.

Testimony taken before Vivian Flexner, Notary Public, at Portland, Oregon, November 6, 1913.

BE IT REMEMBERED, That this cause came on for hearing before me, a Notary Public, pursuant to stipulation hereto attached, and adjournment, on the 6th day of November, 1913, at 2 o'clock P. M., at the office of John H. Hall and Jesse Stearns, Railway Exchange, Portland, Oregon; present Charles H. Carey, counsel for plaintiffs, and Jesse Stearns, counsel for defendants.

Whereupon the following proceedings were had:

A. C. GILMAN, a witness called on behalf of the

defendant, being first duly sworn by the Notary Public, testified as follows:

DIRECT EXAMINATION.

QUESTIONS BY MR. STEARNS:

Q. Mr. Gilman, state your age, residence and occupation.

A. I was born in Eureka, Wisconsin, in 1860; occupation has been mining, lumbering, farming, railroad work; present address is Chesterbury Hotel, Portland, Oregon.

Q. Now, Mr. Gilman, this is a suit in reference to—this is a suit brought for an infringement of an alleged patent for laying Hassam pavement; are you familiar, generally, with the so-called Hassam pavement?

A. Yes, sir.

Q. Will you state when you first saw a pavement resembling or made substantially like the Hassam pavement now in use in the City of Portland, Oregon?

A. Well, there are several kinds of pavement that resemble Hassam pavement, the so-called concrete pavement, but the first Hassam pavement I have ever seen is in Portland.

Q. Well, have you ever seen any pavement that was laid with crushed rock rolled or tamped, with a grouting of Portland cement, water and sand poured over it?

A. Yes, I have seen that; it wasn't called Hassam, though; it was a foundation for other

kinds of pavement, of cedar block pavement, generally, as a base of pavement the same as Hassam—the foundation. And I have seen sidewalks built of it and basement floors and engine house floors, factory floors, made in the same way.

Q. I will call your attention to the first pavement that you saw laid in that way of crushed rock with the grout poured over it—made with grout poured over it.

A. You mean street pavement?

Q. Any pavement.

A. It has been years ago, I saw an approach to a blacksmith shop made from it, when I was 14 years old.

Q. Where was that?

A. That was Eureka, Wisconsin. That was made from the street to the blacksmith shop; it was an approach to the shop.

Q. What was the size of it, as near as you can recollect?

A. It was about 25 feet from the walk to the shop—20 feet wide, probably; about 20 feet square.

Q. Did you see that when it was being made?

A. I did.

Q. Can you describe how it was being made.

A. They excavated about eight inches deep to receive the pavement, they then pounded up native stone there into suitable sizes and filled the excavation with loose rock, and then tamped it with a tamp bar or a block of wood, and then made the mixture of cement and sand and poured it over this

stone and then swept it in and mixed it in a liquid form; that is quite a thin solution.

Q. With water?

A. With water and cement and sand, so that it could be poured in and fill all the voids in the rock, and he then tamped it to be sure that the air was expelled and the mixture was made a solid mass and then they would mix up another batch and pour in and after it was finished he smoothed it up with a trowel or a piece of wood; amounted to the same thing as the present Hassam pavement.

Q. About how thick was the grout which was mixed with the sand and cement and water?

A. Oh, it was the thickness of thin mud, poured readily, so that the mixture would settle to the bottom; agitated and thoroughly mixed, and pour it in quickly; run just like thin mud would.

Q. In pouring the grout upon the loose rocks, state whether or not he poured it until the water flushed to the surface?

A. Why, no, the water would flush to the surface when he tamped it; that was an indication that it was filled; when the water stands on the surface it is an indication that the solution has gone to the bottom of the rock.

Q. To your knowledge how long was that pavement in existence; that is, as long as you personally know about it?

A. Oh, I saw it ten years afterward, but it must have been—the building burned about twenty

years afterwards, and I understand there was another building erected on the ground.

Q. Just what you know of your own knowledge, there about ten years. Now, you say that this resembled the present so-called Hassam pavement?

A. Yes, sir.

Q. In appearance?

A. Yes, sir.

Q. How fine were the rocks crushed—about how fine?

A. Oh, from an inch to two inches.

Q. Do you recall the name of the man who laid that?

A. No, I could not; he was a Russian. I can spell the name, I think, but I could not pronounce it.

Q. Well, you might spell it.

A. W-a-r-y-z-e-n-a-k; we used to call him "Washnaw" for short; that is as near as I can get to it.

Q. Did he own the blacksmith shop?

A. His son owned the shop; he was an old man, came from the old country and could not speak any English.

Q. Now, you mention having seen engine house floors laid in the same manner; where did you see that floor?

A. I have laid two engine house floors myself in the same manner and one factory floor.

Q. State first where the engine house floors were laid and about when?

A. There was one at Crystal Falls, Michigan; well, it was in front of the boilers, what we call a fire hole, laid in the same manner, excavated first and filled with rock, brick bats, and then a mixture of cement and sand and water poured over it and smoothed off.

Q. Was that tamped?

A. It was tamped several times.

Q. Before grouting or afterwards?

A. Both before and after grouting.

Q. About what size was that engine floor—engine house floor at Crystal Falls, Michigan?

A. I should judge eight feet by twelve feet.

Q. Now, you mentioned another one; now, when was that, I didn't get that.

A. About '88 or '89.

Q. Do you know whether that is still there?

A. No, that has been torn up, replaced by a new structure; changed and similar floor put in. It was replaced by a building a short distance away, a new engine house, it had the same kind of floor in it.

Q. When was it replaced, or when was the new engine house built, if you know, that took the place of the one that was destroyed, if you know?

A. About 1890.

Q. Now, you mentioned another engine house floor.

A. I built an excelsior factory at Grantsburg, Wisconsin, with a boiler house attached; the floor of the factory had a similar floor to the Hassam

pavement, and also the fire hole in front of the boiler.

Q. How large a floor was there at the excelsior factory; what was the size of it?

A. About 24x40 feet.

Q. And how did you make that?

A. Cleaned off the loose soil and tamped the sand—sandy country there—tamped the sand and then put in crushed rock. Bought a carload of crushed rock—

Q. What size?

A. —from half an inch diameter to three inches diameter, irregular shape, spread over about five inches of this rock and had men tamp it with tamping bars and mauls, and then mixed a thin solution of cement and sand and water and flooded it over the rock. We had boards around the sides of the floor to keep the water from running out—the grouting, and then tamped it and let it harden a couple of hours, and then finished it by rubbing with trowels and wooden straight edges.

Q. How did you pour the grout?

A. With pails or buckets; mixed up a large batch and then men would carry it in pails and pour it on and other men would sweep it in with brooms.

Q. When was that built?

A. That was built the year following the Spanish War.

Q. 1899?

A. 1899.

Q. Do you know whether that is there yet?

A. That is still there.

Q. Where was this?

A. Grantsburg, Wisconsin.

Q. Is that on any street; can you describe the location any more than an excelsior mill at Grantsburg, Wisconsin?

A. The only mill there; only excelsior mill there; just on the edge of town.

Q. Are those the only instances in which you have personally laid or supervised the making of the kind of pavement described that you now recall?

A. I used it as a starting of a foundation in a building; I don't recall any floors.

Q. Well, where have you used the same process in starting foundations of buildings?

A. In starting foundation walls it is quite common to use this method in making footings of walls.

Q. You mean by that putting in crushed rock and then pouring in grout over it?

A. Yes.

Q. Where have you used such methods?

A. In Minnesota, with the Iron Range Railroad, and I during that time laid several foundations for steel bridges, water tanks, and in depots. It is quite common to start the wall in that manner.

Q. Where was the depot?

A. In Duluth.

Q. What street?

A. Known as the Indian Depot.

Q. Have you seen that method used in other

concrete masonry?

A. I have.

Q. Describe it.

A. It is quite common to use it in building arches, railroad viaducts, aqueducts, build a form of wood and place loose rock over the form and fill it with grouting and build on top from that.

Q. Now, have you ever had occasion to dig up or see the pavement or floors that you have described broken so as to observe whether or not the grout penetrated the voids?

A. Yes, I have; in the factory I spoke of at Grantsburg we had occasion to enlarge our capacity and we had to take up some of the floor and found it to be a solid, compact mass of concrete.

Q. That is, the grout penetrated through all the voids of the rock?

A. Yes, and made a solid stone out of it.

Q. Now, what was the result of the tamping which you have described as using?

A. Well, we did it to expel the air.

Q. When you say "expel the air" what do you mean?

A. So that the mixture would fill the voids between the rock—form a bond.

Q. I mean the tamping before the grouting was put on.

A. That was done to tamp the stone as close together as we could, get them all in place and drive them into the soil, so that they would have a solid bearing; get them to be uniform on top.

Q. And, in other words, to decrease the voids in the rock; is that it?

A. Well, yes, it forces—

Q. It has that effect, hasn't it?

A. The sharp points of the rock would help fill the voids; in agitating it it would make the most compact mass possible.

Q. After the grouting was poured on you would tamp it still farther?

A. Yes, sir.

Q. To what extent?

A. We would tamp it until the water would raise to the surface, until we were sure that it was solid, all the voids were filled.

MR. STEARNS: You can cross examine.

CROSS EXAMINATION.

QUESTIONS BY MR. CAREY:

Q. What is your present occupation, Mr. Gilman?

A. At present I am unoccupied.

Q. What have you recently been engaged in?

A. Been with the Oregon Electric Railway, superintending work for them.

Q. What kind of work?

A. Well, there was a big slide on the Oregon Electric road; we have been down there excavating and ditching and grading.

Q. Have you ever laid any pavement for municipal work?

A. Never have.

Q. Not have engaged in the contracting business for pavements for cities?

A. No, sir.

Q. How does it happen that you came here to testify?

A. Why, I met Mr. Stearns and happened to make a remark that I didn't understand how this company could claim a patent on a process of Hassam pavement when it had been in common use for a great many years; I made that remark.

Q. And then he asked you to come here to testify?

A. He asked me—he said—spoke about a suit that he was interested in and asked me if I would make a deposition to that effect.

Q. Have you ever read over the Hassam patents that are involved in this suit?

A. No, I have not.

Q. Do you know the specifications of those patents?

A. I do not.

Q. Now, this pavement that you saw when you were fourteen years of age at the blacksmith shop in Wisconsin was the only pavement of the kind that you saw laid until you laid one in 1884 at Grantsburg, Wisconsin, was it?

A. I have seen lots of it, but I never personally had anything to do with them.

Q. You say you have seen a lot of it before that?

A. Yes.

Q. Where did you see it?

A. In basement floors, dwelling house basements, warehouse floors, in excavations for scales, for track scales, railroad track scales.

Q. We are speaking now of prior to the time you laid the pavement for the engine house that you have spoken of, in 1884; had you seen it laid anywhere else except the blacksmith shop prior to 1884?

A. I don't recall any place. It is in common use, though, the concrete mixture. Yes, I can remember another incident. A man laid sidewalks around his place, built a house in almost the same way.

Q. Where was that?

A. That was Eureka, Wisconsin.

Q. Eureka.

A. But instead of using cement he used lime mortar; made a grouting of lime mortar.

Q. What was his name?

A. His name was Hager.

Q. Does he live there yet?

A. No, he has been dead years ago; I think the house is still standing; was the last I knew.

Q. Where is the house?

A. Well, it is on what we call Hager's Hill in Eureka, right on the edge of town.

Q. Well, what is the difference in the method you have described from the usual method of using concrete as generally used?

A. Well, the concrete is generally mixed in a

wet solution, the water is mixed with rock and cement and then poured.

Q. Then the essential difference is that in the cases you have described some rock was first laid and tamped and then grouting poured in on it, whereas generally the rock is mixed with the cement before it is poured in?

A. That is the difference, yes.

Q. Was any machinery used in either mixing or laying of this concrete that you have described in any of those instances, the blacksmith shop, or at the factory or at the depot?

A. No, there was no machinery used.

Q. How large a job was this one at the depot you speak of?

A. That I only referred to the footings of the walls?

Q. Yes.

A. There was—I don't recall any floor or any great amount of surface, just the footing of the wall.

Q. You did that yourself, I understand?

A. No, I was inspector of it?

Q. Who was the contractor?

A. Smith, Campbell and McLeod.

Q. Smith—

A. Smith, Campbell and McLeod.

Q. Where are they now?

A. I think the firm is out of business; two members of the firm are in Duluth at present.

Q. Which two, and what are their initials?

A. James Smith, and I don't know McLeod's initials.

Q. Who was the architect for the depot building?

A. The resident engineer.

Q. What was his name and what was the company that built the depot?

A. W. M. McDonagle, resident engineer for the Iron Range Railway Company; Duluth and Iron Range.

Q. That depot was at Duluth?

A. Yes.

Q. What year was that?

A. About 1895.

Q. Have you yourself laid any concrete in that way since that time?

A. No, I think not; not that I recall.

Q. What have you been engaged in since 1895; in the different years since that time?

A. I built this excelsior factory at Grantsburg, was there five years, then had charge of a large grain farm one year; I have been here seven years in the timber business and railroading.

REDIRECT EXAMINATION.

Q. Now, Judge Carey asked you if you had laid any concrete in that manner since 1895; I wonder if you quite understood that. I think you stated that you laid the floor of the excelsior factory in 1899, didn't you, the year after the Spanish war?

A. I don't remember when the date was. I

figured the judge was quoting the same date I gave when I built the factory.

MR. CAREY: I will say in explanation I understood the factory was after the depot, whatever date that was.

A. It was, yes.

Q. I didn't know but what he misunderstood you. I took it he inferred you meant any footings for buildings, or sidewalks in that manner, not the floors; I just wanted to explain that, see that it was clear.

A. The year I built the factory—did I say 1899?

Q. You didn't say, I said 1899. You said it was the year after the Spanish war.

A. Yes. I was there five years, the year before that, I think it was two years before, I was with the Iron Range Railroad.

Q. What you mean to be understood is that you haven't laid any of this kind of concrete since you built the excelsior factory—

A. No.

Q. —whatever that date was.

A. I have laid wet concrete, that is, mixed the rock and grout together and had it laid.

RE-CROSS EXAMINATION.

Q. Where have you done that?

A. Built a school house at Scappoose about four years ago.

Q. You mean you in building that school house

mixed the concrete in the usual way by mixing the sand and cement and water together before it was put in place where it was to be finally placed?

A. Yes, I did.

Q. That is the common way of using concrete, as I understand it.

A. It is, at the present time.

Witness excused.

A. C. GILMAN.

Subscribed and sworn to before me this 8th day of November, 1913.

(Notorial Seal)

VIVIAN FLEXNER,

Notary Public for Oregon and Commissioner to
Take Deposition.

STATE OF OREGON, }
 County of Multnomah, } ss.

I, Vivian Flexner, the Notary Public and reporter heretofore appointed in the stipulation between parties to take and report the testimony to be given before me as such Notary Public, do hereby certify that pursuant to such appointment and authority, which is part hereof, I did, on the 6th day of November, 1913, take the testimony of A. C. Gilman, a witness produced on behalf of the defendants herein; that pursuant to the stipulation which is a part hereof I reduced the said testimony of the said witness and the other proceedings given and had at such hearing to accurate shorthand notes, and thereafter transcribed my said shorthand notes into longhand, and that the foregoing 14 typewritten pages hereto attached contain a full, true and impartial longhand transcript of my said shorthand notes so taken at said hearing, and of the whole thereof.

Witness my hand and Notarial Seal at Portland, Oregon, this 8th day of November, 1913.

(Notarial Seal) VIVIAN FLEXNER,

Notary Public for Oregon and Commissioner to
 Take Deposition.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE DISTRICT OF OREGON.

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Complainants,

vs.

CONSOLIDATED CONTRACT COMPANY, a corporation, and PACIFIC COAST CASUALTY COMPANY, a corporation,

Defendants.

DECREE

No.

AT THE MARCH TERM OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON HELD AT THE UNITED STATES COURT ROOM IN THE CITY OF PORTLAND, ON THE 27TH DAY OF APRIL, 1914.

PRESENT—HON. ROBERT S. BEAN,
DISTRICT JUDGE.

This cause came on to be heard at the March term of the said court in the year 1914 and was argued by counsel and was continued for advisement until the present time, and thereupon, upon consideration thereof, it was

ORDERED, ADJUDGED and DECREED as follows:

That letters patent No. 819,652 entitled "Pave-

ment and Process of Laying the Same," granted and issued on May 1, 1906, to Walter E. Hassam and Charles K. Pevey jointly; No. 861,650 entitled "Artificial Structure and Process of Making the Same," granted and issued on July 30, 1907, to Hassam Paving Company, and No. 851,625 entitled "Process for Laying Pavement," granted and issued on April 23, 1907, to Hassam Paving Company, referred to in the bill of complaint herein, are good and valid as respects all of the specifications thereof.

That the said Walter E. Hassam was the first and original inventor and discoverer of each and all of the said inventions as described and claimed in the said several patents and the specifications annexed thereto.

That the said inventions and each of them were new and useful inventions that were neither known nor used by others in this country before the invention and discovery thereof by the said Hassam, and which were never patented nor described in any printed publication in this or any foreign country before the invention and discovery thereof by the said Hassam for more than two years before the application for the United States letters patent therefor, and at the time of the several applications for United States letters patent therefor the same had not been in public use or sale in the United States for more than two years and were not patented or caused to be patented either by the said inventor or patentees, or by his or their legal rep-

representatives or assigns, in any foreign country upon an application filed more than twelve months prior to the filing of the said several applications in this country, nor had the same been abandoned.

That before the infringement complained of in the bill of complaint the Hassam Paving Company, complainant, became and was and still is the sole owner of each of the said patents as alleged in the said bill of complaint, by assignments duly recorded in the patent office of the United States, and the complainant Oregon Hassam Paving Company became and was and still is the sole licensee in the state and district of Oregon under the said Hassam Paving Company, for the use of the said inventions and improvements as specified in the said patents.

That all of the said inventions and improvements described in and claimed by the said three letters patent No. 819,652, No. 861,650 and No. 851,625, are capable of embodiment and conjoint use in one and the same structure, and have been so embodied and conjointly used by the complainants and also by the defendants in the infringements complained of in said bill of complaint.

That the defendants infringed upon the said letters patent and upon the exclusive rights of the complainants under the same, that is to say by making, using and selling pavements and artificial structures embodying the said inventions and improvements patented as aforesaid, as charged in the bill of complaint.

At it is further ORDERED, ADJUDGED and DECREED that the complainants do recover of the defendants the profits, gains and advantages which the said defendants have received or made or which have arisen or accrued to them or either of them by the manufacture, use or sale of the said pavements and artificial structures in violation of the said letters patent since the 2d day of August, 1911, and that the complainants do recover the damages resulting from said infringements.

And it is further ORDERED, ADJUDGED and DECREED that the complainants do recover of the defendants their costs, charges and disbursements in this suit to be taxed.

And it is further ORDERED, ADJUDGED and DECREED that it be referred to WALLACE McCAMANT, the standing master in chancery, his experience in such matters being found by the court a sufficient reason for such appointment, to ascertain, take and state and report to the court, an account of the number of pavements and structures embodying the said inventions and improvements and each thereof described and secured in the said letters patent, made, used or sold by the said defendants, and also the gains, profits and advantages which the said defendants have received or which have arisen or accrued to them or either of them, since the 2d day of August, 1911, from infringing the said exclusive rights of the said complainants by the manufacture, use or sale of the said inventions and improvements in the

said letters patent, and the damages which the complainants have suffered by said infringements.

And it is further ORDERED, ADJUDGED and DECREED that the complainants on such accounting have the right to cause the examination of the officers of the said defendant corporations *ore tenus*, or otherwise, and also the production of the books, vouchers and documents of the said defendants, and that the officers of the said defendant corporations attend for such purpose before the said master from time to time as the said master shall direct.

And it is further ORDERED, ADJUDGED and DECREED that a perpetual injunction be issued in this suit against the said defendants and each of them, restraining them, their agents, clerks, servants and all claiming or holding under or through them or either of them, from making or selling or in way using or disposing of pavements and structures embracing the inventions or improvements described in the said letters patent, pursuant to the prayer of the said bill of complaint.

Jurisdiction is hereby retained for the purpose of making and enforcing any additional order or orders as may be deemed necessary relative to this suit and to enforce compliance with this decree.

R. S. BEAN,
United States District Judge.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE DISTRICT OF OREGON,

IN EQUITY—No. 3818.

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Complainants.

vs.

CONSOLIDATED CONTRACT COMPANY, a corporation, and PACIFIC COAST CASUALTY COMPANY, a corporation,

Defendants.

PETITION
FOR APPEAL.

TO THE HONORABLE JUDGES OF THE DISTRICT COURT
OF THE UNITED STATES, FOR THE DISTRICT OF
OREGON:

To the above named defendants conceiving themselves aggrieved by the decree and order made, rendered and entered on the 27th day of April, 1914, in the above entitled cause, do hereby appeal from said decree and order to the United States Circuit Court of Appeals for the Ninth Circuit, for the grounds and reasons specified in the assignment of errors filed herewith.

And the said defendants, petitioning appellants, pray that this appeal may be allowed and that a

transcript of the record, proceedings and papers upon which said decree and order was made, July authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, conformable to the statute in such cases made and provided.

JESSE STEARNS,
JOHN H. HALL,
Solicitors for Defendants.

Endorsed. Filed May 20, 1914.

A. M. CANNON, Clerk.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE DISTRICT OF OREGON.

IN EQUITY, No. 3818.

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Complainants.

vs.

CONSOLIDATED CONTRACT COMPANY, a corporation, and PACIFIC COAST CASUALTY COMPANY, a corporation,

Defendants.

ASSIGNMENT
OF ERRORS.

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT AND DISTRICT OF OREGON, IN EQUITY SITTING:

Now comes the above named defendants, and having prayed for an allowance of an appeal from the interlocutory decree rendered and given against them on the 27th day of April, 1914, and entered in said cause, assign for errors in said decree, the following:

First: Said District Court of the United States in and for the District of Oregon, erred in determining and deciding that letters patent No. 819,652 entitled "Pavement and Process of Laying the

Same," granted and issued on May 1, 1906, to Walter E. Hassam and Charles K. Pevey jointly; No. 861,650, entitled "Artificial Structure and Process of Making the Same," granted and issued on July 30, 1907, to Hassam Paving Company; and No. 851,625, entitled "Process for Laying Pavement," granted and issued on April 23, 1907, to Hassam Paving Company, mentioned in the bill of complaint herein, are good and valid in any respect.

Second: That the said District Court erred in determining and deciding that Walter E. Hassam was the first and original inventor and discoverer of each and all of the said alleged inventions as described and claimed in the said several patents, and the specifications annexed thereto.

Third: That the said District Court erred in determining and deciding that the claims and specifications mentioned in said patents, or any of them, were new and useful inventions; that they were neither known nor used by others in this country, before the alleged invention and discovery thereof by the said Walter E. Hassam; and that the said claims and specifications mentioned in the said patents were never patented or described in any printed publication in this or any foreign country before the alleged invention and discovery thereof by the said Hassam, or more than two years before the application for United States letters patent thereof; and that at the time of the several applications for United States letters patent therefor the said claims and specifications had not been in pub-

lic use in the United States for more than two years.

Fourth: That the said District Court erred in not determining and deciding that the said claims and specifications mentioned in the said several patents and each of them, were void for lack of novelty and invention.

Fifth: That the said District Court erred in deciding and determining that said defendants have infringed upon the rights of said complainants claimed under the said three letters patent, No. 819,652, 861,650, and 851,625.

Sixth: Said District Court erred in finding and determining that the complainants are entitled to recover damages from the said defendants by reason of any violation of any rights of the complainants under said letters patent.

Seventh: That the said District Court erred in determining and deciding that the complainants should have a perpetual injunction in this case against the defendants and each of them, restraining them, their agents, clerks, servants and all claiming or holding under or through them or either of them, from making, selling, using or disposing of pavements and structures embracing the alleged inventions or improvements described in the said letters patent.

Eighth: That the said District Court erred in not finding and decreeing for said defendants on the record.

Ninth: That the Findings and Decree of the

said District Court are against the law and the equity of the case.

Wherefore, said defendants pray that the said Order and Decree of April 27th, 1914, be reversed, and that the said District Court of the United States for the District of Oregon be directed to enter an Order and Decree in consonance with law and equity herein; and your petitioner will ever pray.

JESSE STEARNS,
JOHN H. HALL,
Solicitors for Defendants.

Endorsed. Filed May 20, 1914.

A. M. CANNON, Clerk.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE DISTRICT OF OREGON

IN EQUITY—No. 3818.

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Complainants.

vs.

CONSOLIDATED CONTRACT COMPANY, a corporation, and PACIFIC COAST CASUALTY COMPANY, a corporation.

Defendants.

ORDER
ALLOWING
APPEAL.

This day came Consolidated Contract Company, a corporation, and Pacific Coast Casualty Company, a corporation, defendants, and presented their petition for an appeal and the assignment of errors accompanying the same, and upon consideration thereof, it is

ORDERED: That the said appeal and claim of appeal be and is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit, upon the filing of a bond of in the sum of five hundred and no-100 dollars, with good and sufficient surety to be approved by the court; and in the meantime, until the hearing and determina-

tion of this appeal that the accounting under the order and decree appealed from, be suspended and stayed.

DATED, May 20, 1914.

R. S. BEAN, Judge.

Endorsed. Filed May 20, 1914.

A. M. CANNON, Clerk.

IN THE DISTRICT COURT OF THE
UNITED STATES

FOR THE DISTRICT OF OREGON.

IN EQUITY—No. 3818.

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Complainants.

vs.

CONSOLIDATED CONTRACT COMPANY, a corporation, and PACIFIC COAST CASUALTY COMPANY, a corporation,

Defendants.

BOND ON
APPEAL.

KNOW ALL MEN BY THESE PRESENTS,
That we, CONSOLIDATED CONTRACT COMPANY, a corporation, and PACIFIC COAST CASUALTY COMPANY, a corporation, appellants, as principals, and NEW ENGLAND CASUALTY COMPANY, of Boston, Massachusetts, as surety, are held and firmly bound unto Hassam Paving Company, a corporation, and Oregon Hassam Paving Company, a corporation, complainants, appellees, in the full and just sum of five hundred dollars (\$500.00), to be paid unto them, their successors or assigns, to which payment well and truly to be made we ourselves are bound as well as our successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 22d day of May, 1914.

Whereas, lately in the District Court of the United States for the District of Oregon, in a suit depending in said court as hereinabove first entitled, an Order and Decree was rendered and entered against the above named defendants, the appellants, who, having obtained an appeal therefrom to the United States Circuit Court of Appeals for the Ninth Circuit, and filed a copy of said appeal in the clerk's office, to reverse the aforesaid decree, and a citation has issued directed to the said several appellees citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the City of San Francisco in said circuit on the return day of said citation next;

Now, the condition of the above obligation is such that if the said appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation is void; else to remain in full force and effect.

Sealed and delivered in the presence of: J. M. Hiatt, M. A. Imbler.

CONSOLIDATED CONTRACT COMPANY,
By Jesse Stearns, Attorney.

PACIFIC COAST CASUALTY COMPANY,
By Jesse Stearns, Attorney.

PRINCIPALS.

NEW ENGLAND CASUALTY COMPANY,
By Louis Van Orman, its Attorney-in-Fact.

(Corporate Seal.) SURETY.

Attest: C. M. Kirkley, its attorney-in-fact,
Portland, Ore.

Countersigned by Seeley & Co., general agents.

Pursuant to order heretofore entered touching
said appeal this Bond is presented to me for ap-
proval and I hereby approve the same.

R. S. BEAN, Judge.

Endorsed. Filed May 22, 1914.

A. M. CANNON,
Clerk U. S. District Court.

CITATION ON APPEAL.

UNITED STATES OF AMERICA, }
 DISTRICT OF OREGON. } ss.

To Hassam Paving Company, GREETING:

WHEREAS, Consolidated Contract Co. has lately appealed to the UNITED STATES CIRCUIT COURT OF APPEALS for the NINTH CIRCUIT from a decree rendered in the DISTRICT COURT of the UNITED STATES for the District of Oregon, in your favor, and has given the security required by law:

YOU ARE, therefore, hereby, cited and admonished to be and appear before said UNITED STATES CIRCUIT COURT OF APPEALS for the NINTH CIRCUIT, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand, at Portland, in said District, this 23d day of May in the year of our Lord, one thousand, nine hundred and fourteen.

R. S. BEAN, Judge.

Service accepted this 23d day of May, 1914.

CAREY & KERR,
 Attorneys for Plaintiffs.

Endorsed. Filed May 25, 1914.

A. M. CANNON,
 Clerk U. S. District Court.

U. S. CIRCUIT COURT OF APPEALS,
FOR THE NINTH CIRCUIT.

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Complainants.

vs.

CONSOLIDATED CONTRACT COMPANY, a corporation, and PACIFIC COAST CASUALTY COMPANY, a corporation,

Defendants.

No. 3818.

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the parties in the above entitled suit that the printed pleadings, testimony, and exhibits offered and considered in the court below, shall be a part of the transcript and record on appeal in this cause; and that the deposition of A. C. Gilman taken in the suit in the District Court of Oregon by the above named complainants against Reliance Construction Company and other defendants, shall be a part of the transcript and may be printed in the record on appeal, in this cause; that the decree, petition for appeal, order allowing the appeal, assignment of errors, bond on appeal and this stipulation and order entered hereon, may be printed by appellant; that the above mentioned pleadings, testimony and papers shall constitute

the transcript and record on the appeal in this cause; and that the certificate of the judges and clerk of the District Court of the United States for the District of Oregon as to the transcript and the printed record, be waived.

That the time within which to file transcript and docket the same in the United States Circuit Court of Appeals be, and the same is hereby extended to and including the 28th day of October, 1914; and that the time of the appellant to print and file the record on said appeal be likewise extended to and including said date.

DATED, September 24th, 1914.

LOUIS W. SOUTHGATE and
CAREY & KERR,

Solicitors for Appellees.

JESSE STEARNS and
JOHN H. HALL,

Solicitors for Appellants.

IN THE UNITED STATES CIRCUIT COURT
OF APPEALS

FOR THE NINTH CIRCUIT.

HASSAM PAVING COMPANY, a corporation, and OREGON HASSAM PAVING COMPANY, a corporation,

Appellees,

vs.

CONSOLIDATED CONTRACT COMPANY, a corporation, and PACIFIC COAST CASUALTY COMPANY, a corporation,

Appellants.

ORDER.

Upon the Stipulation of the parties to the above entitled cause, dated September 24th, 1914, and upon motion of Jesse Stearns of counsel for the appellants, it is

ORDERED: That the printed pleadings, testimony and exhibits offered and considered in the United States District Court for the District of Oregon, shall be a part of the transcript and record on appeal in this cause; and that the deposition of A. C. Gilman taken in the suit in said District Court by the above named complainants against Reliance Construction Company et al. shall be a part of the transcript, and may be printed in the record on appeal in this cause; that the decree, petition for appeal, order allowing the appeal, assignment

of errors, bond on appeal and said Stipulation and this Order may be printed by appellant; and that the above mentioned pleadings, testimony and papers shall constitute the transcript and record on the appeal in this cause; and that the certificate of the judges and clerk of the District Court of the United States for the District of Oregon as to the transcript and the printed record, be waived.

IT IS FURTHER ORDERED: That the time within which to file transcript and docket the same in the United States Circuit Court of Appeals be, and the same is hereby extended to and including the 28th day of October, 1914; and that the time of the appellant to print and file the record on said appeal be likewise extended to and including said date.

DATED, September 26th, 1914.

WM. B. GILBERT, Judge.